

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUAN ALBERTO CASTANEDA MIRANDA,

Plaintiff,

v.

U.S. DRUG ENFORCEMENT
ADMINISTRATION, a U.S. government
agency; U.S. FEDERAL BUREAU OF
INVESTIGATION, a U.S. government agency;
UNITED STATES BUREAU OF ALCOHOL,
TOBACCO, FIREARMS & EXPLOSIVES, a
U.S. government agency; AGENT AGUIRE,
BADGE NO. 7785, an employee for the U.S.
federal government; AGENT MORELAND,
BADGE NO. 7701, an employee for the U.S.
federal government; and UNKNOWN NAMED
AGENTS OF THE U.S. FEDERAL BUREAU
OF INVESTIGATION, U.S. DRUG
ENFORCEMENT ADMINISTRATION, U.S.
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS & EXPLOSIVES 1-10, inclusive,

Defendants.

CASE NO. 2:21-cv-00952-JCC

DEA, FBI, AND ATF'S
MOTION TO DISMISS

Noted for consideration:
October 22, 2021

Defendants U.S. Drug Enforcement Administration ("DEA"), U.S. Federal Bureau of
Investigation ("FBI"), and U.S. Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF"),
by and through counsel of record, Tessa M. Gorman, Acting United States Attorney for the

Western District of Washington, and Kristen R. Vogel, Assistant United States Attorney for said District, hereby moves pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss Plaintiff's claims against DEA, FBI, and ATF for lack of subject matter jurisdiction.¹

I. STATEMENT OF FACTS

Plaintiff Juan Alberto Castaneda Miranda files this civil rights action seeking compensatory and punitive damages for alleged violations of his constitutional and state law rights. Dkt. 1 ("Compl."), at ¶¶ 1.1.

Mr. Castaneda Miranda alleges that on July 13, 2018, the U.S. District Court for the Western District of Washington issued a search and seizure warrant to search his apartment for controlled substances, drug paraphernalia, drug transaction records, etc. *Id.* at ¶ 4.9. Pursuant to that search warrant, Mr. Castaneda Miranda alleges that on July 17, 2018, the defendants "raided and destroyed [his] apartment, killing his cat, and causing personal injuries to [him]." *Id.* at ¶ 4.10. Plaintiff alleges that during this raid he pleaded with agents to look in his wallet to confirm that they had the wrong apartment and the wrong person but that his pleas were ignored. *Id.* at ¶¶ 4.11-4.12. Plaintiff alleges that after his apartment and vehicle were "torn up," he was informed by the defendants that they had "the wrong individuals and the wrong apartment and to complete claim forms for reimbursement of damages." *Id.* at ¶¶ 4.13-4.14. As a result, Plaintiff alleges that he has suffered significant personal injuries, wage loss, and property damage from the defendants' wrongful arrest, search and seizure and destruction of his personal belongings in violation of his Fourth and Fifth Amendment rights. *Id.* at ¶ 4.15.

Plaintiff's Complaint asserts six claims for relief against all defendants: (1) unreasonable

¹ Pursuant to either 42 U.S.C. § 1983 or *Bivens*, Plaintiff also sues Agents Aguire and Moreland, whom he alleges are (or were) employees of the U.S. federal government. Upon information and belief, these two individuals have not been served with a summons and complaint, nor are they federal employees. Accordingly, this motion is only on behalf of DEA, FBI, and ATF.

1 search and seizure for his detention and arrest pursuant to 42 U.S.C. § 1983; (2) unreasonable
 2 search and seizure for use of excessive force pursuant to 42 U.S.C. § 1983; (3) substantive due
 3 process violations pursuant to 42 U.S.C. § 1983; (4) federal, city, county, and municipal liability
 4 for unconstitutional customs or policies pursuant to 42 U.S.C. § 1983; (5) federal, city, county,
 5 and municipal liability for failure to train pursuant to 42 U.S.C. § 1983; and (6) a plausible claim
 6 for relief against the defendants pursuant to *Bivens*. Compl. at ¶¶ 5.1-10.4.

7 **II. STANDARD OF REVIEW**

8 Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(1) when the court
 9 lacks subject matter jurisdiction over the claim. Federal district courts are courts of limited
 10 jurisdiction; “[t]hey possess only that power authorized by Constitution and statute, which is not
 11 to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,
 12 377 (1994) (citations omitted). Accordingly, “[i]t is to be presumed that a cause lies outside this
 13 limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting
 14 jurisdiction.” *Id.* (citations omitted).

15 A motion to dismiss for lack of subject matter jurisdiction can attack the allegations
 16 either facially or factually. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir.
 17 2004). A moving party facially attacks the allegations by asserting “that the allegations
 18 contained in a complaint are insufficient on their face to invoke federal jurisdiction.” *Id.* In
 19 reviewing a facial attack, the court must accept all of the factual allegations in the complaint as
 20 true. *Lacano Investments, LLC v. Balash*, 765 F.3d 1068, 1071 (9th Cir. 2014). Even when
 21 accepting the truthfulness of the allegations however, “[t]he plaintiff in a lawsuit against the
 22 United States must point to an unequivocal waiver of sovereign immunity” to sustain his burden
 23 of demonstrating that subject matter jurisdiction exists. *Blue v. Widnall*, 162 F.3d 541, 544 (9th
 24 Cir. 1998); *see also Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995) (plaintiff bears the

burden of showing that the United States has waived its sovereign immunity).

III. ARGUMENT

A. The Court Lacks Subject Matter Jurisdiction Over Plaintiff's *Bivens* Claim Against DEA, FBI, and ATF.

Plaintiff's claim against DEA, FBI, and ATF under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) must be dismissed. The United States, as a sovereign, is immune from suit unless it consents to be sued. *United States v. Mitchell*, 445 U.S. 535, 538 (1980). Any waiver of that immunity must be strictly construed in favor of the United States. *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33-34 (1992); *Jerves v. United States*, 966 F.2d 517, 521 (9th Cir. 1992). A waiver of sovereign immunity "cannot be implied but must be unequivocally expressed." *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 95 (1990). Moreover, it is the burden of any party advancing a claim against the United States to plead and prove that the court has jurisdiction to entertain the claim. *See Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983), *cert. denied*, 466 U.S. 958 (1984).

Additionally, federal district courts lack jurisdiction over suits against the United States unless the United States has expressly and unequivocally waived its sovereign immunity. *Balser v. Dep't of Justice, Office of U.S. Tr.*, 327 F.3d 903, 907 (9th Cir. 2003). Therefore, where the United States is the defendant, the plaintiff must show both subject matter jurisdiction and that the United States has waived its sovereign immunity. *Powelson v. United States, By and Through Sec'y of Treasury*, 150 F.3d 1103, 1104 (9th Cir. 1998) ("in an action against the United States, in addition to statutory authority granting subject matter jurisdiction, there must be a waiver of sovereign immunity.") (internal quotations and citations omitted).

Under a *Bivens* action, a plaintiff can sue a federal officer in his or her individual capacity seeking monetary damages for civil rights violations under color of federal law. *Bivens*,

403 U.S. at 388. However, the Supreme Court has explicitly declined to recognize a *Bivens* action for damages against federal agencies. *See FDIC v. Meyer*, 510 U.S. 471, 486 (1994) (“[a]n extension of *Bivens* to agencies of the Federal Government is not supported by the logic of *Bivens* itself”); *see also Cuevas v. Dep’t of Homeland Security*, 233 Fed. Appx. 642, 643-44 (9th Cir. 2007) (affirming court’s dismissal of plaintiff’s constitutional claims because “DHS has not waived its sovereign immunity” and any *Bivens* claim against DHS or against the federal officials in their official capacity was foreclosed); *Ibrahim v. Dep’t of Homeland Sec.*, 538 F.3d 1250, 1257 (9th Cir. 2008) (“But no *Bivens*-like cause of action is available against federal agencies or federal agents sued in their official capacities.”). Accordingly, the law is clear that Plaintiff’s *Bivens* claim against DEA, FBI, and ATF must be dismissed for lack of subject matter jurisdiction.

Furthermore, aside from *Bivens*, Plaintiff cites to no other statute or law that unequivocally waives the United States’ sovereign immunity and allows him to sue federal agencies for monetary damages.² Accordingly, this Court lacks subject matter jurisdiction over Plaintiff’s constitutional claims seeking monetary damages from DEA, FBI, and ATF.

B. The Court Lacks Subject Matter Jurisdiction over Plaintiff’s Sections 1983, 1985, and 1986 Claims Against DEA, FBI, and ATF.

To the extent Plaintiff asserts claims against DEA, FBI, and ATF pursuant to 42 U.S.C. §§ 1983, 1985, and 1986, those claims must also fail. The Civil Rights Act, codified at 42 U.S.C. § 1983, “provides a remedy only for deprivation of constitutional rights by a person

² On the face of the Complaint it is unclear whether Plaintiff also attempts to assert common law tort claims in addition to constitutional claims against the federal government pursuant to the Federal Tort Claims Act (“FTCA”). However, FBI, DEA, and ATF must still be dismissed from this lawsuit “[b]ecause the United States is the only proper party defendant in an FTCA action” and “[a] claim against [a federal agency] in its own name is not a claim against the United States.” *Kennedy v. U.S. Postal Service*, 145 F.3d 1077, 1078 (9th Cir. 1998) (citing 28 U.S.C. § 2679(a)).

1 acting under color of law of any state or territory or the District of Columbia.” *Daly-Murphy v.*
 2 *Winston*, 837 F.2d 348, 355 (9th Cir. 1988). Here, to the extent Plaintiff alleges constitutional
 3 violations by DEA, FBI, and ATF, or other federal actors, his Section 1983 claims must fail
 4 because “by its very terms, § 1983 precludes liability in federal government actors.” *Morse v. N.*
 5 *Coast Opportunities, Inc.*, 118 F.3d 1338, 1343 (9th Cir. 1997). Similarly, the Ninth Circuit has
 6 also held that Sections 1985 and 1986 do not waive a federal agency’s sovereign immunity. *See*
 7 *Jachetta v. United States*, 653 F.3d 898, 908 (9th Cir. 2011) (“To the contrary, §§ 1983 and 1985
 8 impose liability upon a ‘person,’ and a federal agency is not a ‘person’ within the meaning of
 9 these provisions.”) (citation omitted); *see also Trerice v. Pedersen*, 769 F.2d 1398, 1403 (9th Cir.
 10 1985) (“[A] cause of action is not provided under [§ 1986] absent a valid claim for relief under
 11 [§] 1985.”). Therefore, Plaintiff’s Sections 1983, 1985, and 1986 claims against DEA, FBI, and
 12 ATF must be dismissed.

13 **C. Plaintiff is Not Entitled to Injunctive Relief From DEA, FBI, and ATF.**

14 Plaintiff’s Complaint also requests “that his name be cleared from all records with
 15 Defendants and any other reporting agency, so that he will not have this botched and reckless
 16 event continue to smear his name legally and socially.” Compl. at ¶ 12.5. As an initial matter, it
 17 is unclear what Plaintiff means when he requests DEA, FBI, or ATF to clear his name “from all
 18 records.” Plaintiff’s vague, poorly defined request runs afoul of the requirement that the
 19 language of injunctions must be “‘reasonably clear so that ordinary persons will know precisely
 20 what action is proscribed.’” *Premier Communications Network v. Fuentes*, 880 F.2d 1096, 1100
 21 (9th Cir. 1989) (quoting *United States v. Holtzman*, 762 F.2d 720, 726 (9th Cir. 1985)); *see also*
 22 Fed. R. Civ. P. 65(d)(1) (requiring that an injunction order “state its terms specifically; and
 23 describe in reasonable detail — and not by referring to the complaint or other document — the
 24 act or acts restrained or required”). On that basis alone his request should be denied.

Furthermore, Plaintiff does not show a plausible basis for standing to seek injunctive relief from DEA, FBI, or ATF. “To bring suit in federal court, a plaintiff must establish three constitutional elements of standing.” *Mayfield v. United States*, 599 F.3d 964, 969 (9th Cir. 2010). Plaintiff must (1) “have suffered an injury in fact,” (2) “establish a causal connection between the injury and the defendant’s conduct,” and (3) “show a likelihood that the injury will be redressed by a favorable decision.” *Id.* (quotations omitted). Additionally, Plaintiff “must demonstrate standing *separately* for each form of relief sought.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv., Inc.*, 528 U.S. 167, 185 (2000) (emphasis added). “Past exposure to harmful or illegal conduct does not necessarily confer standing to seek injunctive relief if the plaintiff does not continue to suffer adverse effects.” *Mayfield*, 599 F.3d at 970. “Once a plaintiff has been wronged, he is entitled to injunctive relief only if he can show that he faces a real or immediate threat ... that he will again be wronged in a *similar* way.” *Id.* (quotations omitted) (emphasis added); *see also Nordstrom v. Ryan*, 762 F.3d 903, 911 (9th Cir. 2014) (“A plaintiff seeking prospective injunctive relief must demonstrate that he is realistically threatened by a *repetition* of [the violation].”) (quotations omitted) (alteration and emphasis in original).

Here, Plaintiff fails to allege with any specific facts how any federal government records in the custody and control of DEA, FBI, or ATF “continue to smear his name legally and socially.” Compl. at ¶ 12.5. Rather, he vaguely alleges that this incident “has prevented him for [sic] performing his specialized work duties with sophisticated internet installations for his employer,” but he does not provide any additional information that would allow the Court to determine whether he is realistically threatened by a repetition of similar future violations as opposed to completed actions. As pled, Plaintiff’s request to “clear all records” must be denied.

Accordingly, for the reasons set forth above, DEA, FBI, and ATF respectfully request dismissal from this civil rights lawsuit for lack of subject matter jurisdiction.

DATED this 20th day of September, 2021.

Respectfully submitted,

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Acting United States Attorney

s/ Kristen R. Vogel

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